The 9th June, 1969

No. 3274-A.S.O.-II-Lab-69/13859.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Frick India Ltd., Faridabad:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 53 of 1968

Between

SHRI DEV KUMAR WORKMAN AND THE MANAGEMENT OF M/S FRICK INDIA LTD., FARIDABAD

Present.—

Shri Roshan Lal Sharma, for the workman.

Shri S.L. Gupta, for the management.

AWARD

Shri Dev Kumar Shah was in the service of M/s Frick India Ltd., Faridabad as a Galvanising Mistri at Rs. 275/- P.M. He was employed on 13th March, 1967 and his services were terminated on 18th January, 1968. This gave rise to an industrial dispute and the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. ID/FD/15801, dated 26th June, 1968 :—

Whether the termination of services of Shri Dev Kumar Shah was justified and in order. If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. On behalf of the management a preliminary objection has been raised that the order of reference is not correctly worded. It is pleaded that the present dispute is only between the workman Shri Dev Kumar and the management and there is no collective dispute between the workman as a body and the management. It is further pleaded that the General Labour Union who has sponsored the present case was not competent to do so because the General Labour Union is not representative union of the workman of the respondent factory. It is also pleaded that section 2A of the Industrial Disputes Act is ultravires of the Constitution. On merits it is pleaded that the claimant was in fact retrenched from service because the management closed down the Galvanising plant and consequently the service of the claimant became surplus. The pleading of the parties gave rise to the following issues :—

(1) Whether the objection that section 2A of the Industrial Disputes Act is ultravires can be raised in this Court ?

(2) Whether the reference is not valid for the reasons mentioned in the preliminary objection ?

(3) Whether the claimant can be represented by the General Labour Union ?

(4) Whether the respondent has closed the Galvanising plant and the claimant became surplus and the termination of his services is justified and in order ?

The parties have produced evidence in support of their respective contentions. I have heard the learned representative of the parties and have gone through the record. My findings are as under :—

Issue No. 1.—This Court is a Court of special jurisdiction and it is not competent to interpret the Constitution, therefore the objection that section 2A of the Industrial Disputes Act is ultravires of the Constitution can not be raised in this Court. I find this issue in favour of the workman.

Issue Nos. 2 and 3.—Under section 2A of the Industrial Disputes Act a workman can raise an industrial dispute if he is aggrieved by reasons of the termination of his services even if no other workman or union of workman espouse his cause. The present dispute has been raised by the workman himself. The General Labour Union has not sponsored this case but is simply representing the workman in these proceedings. Under section 36 of the Industrial Disputes Act a workman is entitled to be represented by a registered trade union of which he is a member. I, therefore find both these issues in favour of the workman.

Issue No. 4.—Shri Y. N. Sharma M. W. 1, Personnel Officer of the respondent concern had stated that they had installed a Galvanising plant in March, 1967 and the applicant was appointed as a Galvanising Mistry with effect from 13th March, 1967. Shri Sharma has stated that this plant was uneconomic and so it was closed in December, 1967 and the services of the claimant were retrenched on 18th January, 1968 and since the claimant have only worked for 221 days and he was not entitled to any retrenchment compensation. The claimant had not contested the statement of Shri Sharma that the Galvanising plant was not closed down and for this reason his retrenchment was not in order. He has only contested the validity of his retrenchment on the ground that no prior notice of retrenchment was given to him and the Labour Department was also not informed. He further maintains that he was working on permanent basis and that he had remained in service for more than 240 days and therefore under section 25 (b) of the Industrial Disputes Act he must be deemed to have

been in continuous service for one year and it was incumbent upon the management to have given him one month notice and retrenchment compensation equivalent to 15 days average pay as also a notice in the prescribed manner to the appropriate Government of such authority as may be specified by the Government.

The learned representative of the management maintains that the claimant had not actually served for 240 days during twelve calendar months and therefore he could not be deemed to have been in continuous service for one year.

In my opinion the submission of the representative of the management is correct and it can not be said that the applicant has been in continuous service for a period of one year under the management. It may be that the applicant has been in the service of the management for a continuous period of more than 240 days but till his case would not fall within the definition of "continuous service for a period of one year" as given in clause (a) of sub-section (2) of section 25 (B) of the Industrial Disputes Act. The workman can be said to be in continuous service for a period of one year if he fulfills two conditions namely :—

(i) he should have actually worked under the management during the period of twelve calendar months preceding the date with reference to which calculation is to be made.

(ii) He must have worked for 240 days or more.

While the applicant fulfills the second condition he does not fulfills the first condition i.e., it can not be said that he has been in the service of the management during the period of 12 calendar months from the date his services were terminated. He was employed only on 13th March, 1967 and his services were terminated on 18th January, 1968. This means that the applicant completed more than 240 days during the period of 11 calendar months and not 12 calendar months. The submission of the learned representative of the management is therefore correct that the case of the claimant does not fall within the provisions of section 25(c) of the Industrial Disputes Act and he was therefore not entitled to one months notice nor he was entitled to any compensation before he could be retrenched from service.

As already observed the learned representative of the workman has not pleaded that the management have not closed their Galvanising plant in which the claimant was working and that he had not actually become surplus. The termination of his services was therefore justified and he is not entitled to any relief. No order as to cost.

Dated 13th May, 1969.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

No. 2278, dated 17th May, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated 13th May, 1969.

The 10th June, 1969

No. 3416-A S O. II-Lab-69/13856.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s B.O.C. Woollen Mills, Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 29 of 1969

Between

Shri Bishwa Singh workman and the Management of M/s B. O. C. Woollen Mills, Panipat.

Present.—

Shri Raghbeer Singh, for the workman.

Nemo, for the management.

AWARD

Shri Bishwa Singh was in the service of M/s B.O.C. Woollen Mills Panipat. His services were terminated and this gave rise to an industrial dispute. The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of secton 10 of the Industrial Disputes Act, 1947, referred the fo llowing dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/KNL/53-A/69/11246, dated 11th April, 1969 :—

Whether the termination of services of Shri Bishwa Singh is justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties. It is however not necessary to decide the case on merits. Shri Raghbir Singh who represents the workman has made a statement that the respondent Company has closed down and the workman has been paid his retrenchment compensation and therefore the question for reinstatement does nor arise. I give my award accordingly.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 3rd June, 1969.

No. 2404, dated the 5th June, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employmen Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Faridabad.

Dated the 3rd June, 1969

No. 3413-A.S.O.II-Lab-69/13860-A.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Amateep Machine Tools (P) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD.

Reference No. 49 of 1968

between

SHRI RAM SINGH, WORKMAN AND THE MANAGEMENT OF M/S AMATEEP MACHINE TOOLS, (P) LTD., FARIDABAD.

Present :

Shri Roshan Lal Sharma, for the workman.

Shri S.L. Gupta, for the management.

AWARD

Shri Ram Singh was employed as a Painter helper in M/s. Amateep Machine Tools, (P) Ltd., Faribabad on 3rd March, 1967 at Rs 100 P.M. The workman claims that his Services have been illegally terminated while the management maintains that the workman himself left the service of the respondent company after collecting his dues in full and final settlement. This gave rise to an industrial dispute and the President of India, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court,—*vide* Government Gazette Notification No. ID/FD/32D/12487, dated 15th May, 1968.

Whether termination of services of Shri Ram Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. It is pleaded on behalf of the management that there is only an individual dispute between the workman and the management and therefore the reference is not legal. It is also pleaded that the General Labour Union who has sponsored the case of the workman is not competent to do so. Section 2A of the Industrial Disputes Act is said to be ultra vires of the Constitution. On merits it is pleaded that the workman himself left the service of the respondent company,—*vide* Memo. Ex. M. 1 and has collected his dues in full and final settlement of his claim,—*vide* voucher Ex. M. 2 and therefore there is no dispute between the parties which can be adjudicated upon. The pleadings of the parties gave rise to the following issues—

(1) Whether the objection that section 2A of the Industrial Disputes Act, 1947, is ultra vires can be raised in this Court ?

(2) Whether the General Labour Union cannot represent the workman in these proceedings ?

(3) Whether there is no industrial dispute between the parties ?

(4) Whether the workmen himself left the Service of the respondent company ?

(5) Whether the respondent has collected his dues in full and final settlement of his claim ?

(6) If the above issues are found in favour of the applicant, whether the termination of his services was justified and in order, if not to what relief he is entitled ?

The parties have produced evidence in support of their respective contentions. I have heard the learned representative of the parties and have carefully gone through the record. My findings are as under :—

Issue No. 1.—This Court is a Court of special jurisdiction constituted under the Industrial Disputes Act and is therefore not competent to consider the vires of any provisions of law and the objection that section 2A of the Industrial Disputes Act is ultra vires cannot be raised in this Court. I fined this issue in favour of the workman.

Issue No. 2.—The present dispute has been raised by the workman himself and the General Labour Union is simply representing the workman. The demand notice marked Annexure 'A' which has been received along with the order of reference bears the signatures of the workman himself. Under section 36 of the Industrial Disputes Act and officer of a registered Trade Union can represent the workman in any proceedings under the said Act. I, therefore, find this issue in favour of the workman.

Issue No. 3.—If a workman is aggrieved by reason of termination of his services then he can raise a dispute with regard to the validity of the termination of his services even if no other workman or any union of the workman sponsors his case and under section 2A of the Industrial Disputes Act it is deemed to be an industrial dispute. It is, therefore, not correct to say that there is no industrial dispute between the parties. I, find this issue also in favour of the workman.

Issue No. 4.—Shri Sant Lal Magu, M. W. 1 Personnel Officer of the respondent concern has stated that the workman himself did not wish to continue in the service of the respondent and therefore he resigned his job on 8th February, 1968,—*vide* memo Ex. M. 1 and received Rs 30.60 in full and final settlement of all his claims,—*vide* voucher Ex. M. 2 Shri Magu states that the workman in fact stopped working from 4th January, 1968 but then he rejoined in the beginning of the month of February 1969. worked only for 8 days and then again left the services. The attendance card of workman has also been produced by the management.

On the strength of the evidence of Shri Sant Lal Magu it is submitted by the learned representative of the management, that it is a case of discharge simplicitor. No malafides or victimisation has been pleaded on behalf of the workman and the workman had himself collected his dues in full and final settlement so no dispute was left between the parties which required adjudication. It is submitted that it is always open to an employer to terminate the services of his workman in accordance with the terms of contract or the provisions of the standing orders. In support of this submission reliance is placed upon the authority cited as 1966-II-LLJ 602 in which it has been held that normally an employer in a proper case is entitled to exercise his power to terminate the services of his employee in accordance with the contract of employment or provisions in standing orders athorising an industrial employer to terminate the services of its employees after giving notice of one month or paying salary for the month in lieu of notice".

I have carefully considered the submission of the learned representative of management and in my opinion he is not correct when he says that it is a case of bona fide exercise of the powers of the employer to discharge his workman from service or that the workman himself resigned his job and accepted the dues in full and final settlement. In my opinion the version given by the workman that the management wrongfully turned him out of services because he requested that he may be made permanent is correct. The workman in his evidence has stated that he was asked to collect his dues on 12th February, 1968 and go away because he demanded that he should be made permanent. The witness says that he proteste against the termination of his services and complained to the Labour Inspector who advised him to accept his dues. The Memo. Ex. M. 1 which was written by the workman at the time when the dues were paid to him only acknowledges the receipt of the dues. It is true that in addition the workman also wrote that he had no account left with the respondent company and that he was going of his own free will. The workman has explained that he wrote these words under coercion because he was threatened that he would be sent to jail. The workman did not allege any coercion in his statement of claim nor is there any other evidence to support the allegation of coercion and in my opinion no coercion is proved but still the management have not explained under what circumstances a writing was taken from the workman on 20th February, 1968 that he was leaving the service of his own free will when in fact he had already left the service on 8th February, 1968.

The version of the workman that he himself did not resign his job is corroborated by his complaint copy Ex.W.W. 2/1 which was given to the Labour Inspector and which has been proved by Shri Ram Sarup Clerk of the Labour Department who was summoned with the original file containing the complaint and the orders passed by the Labour Inspector at the back of the complaint. Shri Ram Sarup has stated that this complaint was received on 12th February, 1968 and the complaint of the workman was that he was not given the attendance card on 10th February, 1968 at 5 p.m. and the watchman did not permit him to enter the factory. Shri Ram Sarup has also proved the order which the Labour Inspector wrote at the back of this complaint. The order is as under:—

"That the management is prepared to pay him his wages for December, 1967 and January, 1968. He is no more on the rolls of the company. He was a casual employee from 15th January, 1968. He was terminated on 4th January, 1968. He has been serving the company since 3rd March, 1967 to 11th February, 1968. The union may raise the demand notice and the worker may collect his dues for December, 1967 and January, 1968 and for his reinstatement he may file a demand notice".

The witness was not cross examined by the management. The means that the management have not contested the correctness of the version which they gave before the Labour Inspector and which a direct contradiction with the stand now taken up by them in this court that the workman himself resigned his job and collected his dues in full and final settlement because he was not interested to continue in the service of the respondent. In case the workman did not wish to continue in service and wanted to resign then he would have submitted his resignation either before or on the date he left the service. There was no occasion for the workman to give a writing after 12 days of his leaving the service that he had himself left the service of

his own free will. Moreover no reason has been suggested by the management as to why the workman was interested in leaving the service. Shri Sant Lal, Personal Officer on the respondent concern, has stated at virtually the workman had stopped working with effect from 4th January, 1968, rejoined in the month of February and then worked only for 8 days. It has not been explained why the workman stopped working with effect from 4th January, 1968, why he rejoined and again left service without giving any reason or submitting any resignation.

It appears that when the workman approached the management for collecting his dues as advised by the Labour Inspector it must have then occurred to them to get some writing from the workman that he had no further claim on them and that he was leaving of his own free will so that he may not again raise any dispute. In my opinion the version of the management that the workman himself resigned the job is not correct. I find this issue also in favour of the workman.

Issue No. 5.—It is submitted that the workman is not competent to claim reinstatement because while accepting the dues he gave a writing Ex. M. 2 that he was receiving the amount in full and final settlement of his dues. There is no force in this contention either because the management simply paid the amount due to the workman which he received. The words 'full and final settlement' in this context only mean that no other amount was due to the workman. These words cannot be held to mean that the workman relinquished his claim, if any, for wrongful termination of his services. In my opinion the workman is not barred from contesting the validity of the termination of his services. I find this issue also in favour of the workman.

Issue No. 6.—In view of my findings above, it must be held that the termination of his services of the workman was not justified and in order and he is entitled to be reinstated with continuity of service and full back wages.

P. N. THUKRAL,

The 2nd June, 1969. Presiding Officer,

Labour Court, Faridabad.

No. 2409, dated the 5th June, 1969

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,

Labour Court, Faridabad.

R.I.N. AHOOJA, Secy.

REVENUE DEPARTMENT

The 17th June, 1969

No. 1536-AR (III)-69/14896.—The Governor of Haryana is pleased to extend the terms of the Committee constituted for examining the entire working of the Tenancy Laws in Haryana State with Haryana Government notification No. 5831-AR(IV)-68/2471, dated the 12th November, 1968, and further expanded with Haryana Government notification No. 6665-AR(IV)-68/2778 and 202-AR.(III)-69/1539, dated the 18th December, 1968 and 20th January, 1969 respectively for another 6 months on the existing terms and conditions.

B. S. GREWAL,

Financial Commissioner, Revenue.

PUBLIC WORKS DEPARTMENT

BUILDINGS AND ROADS BRANCH

The 19th June, 1969

No. 20/EI.— On his promotion as officiating Sub-Divisional Engineer, Shri D.R. Khurana reported for duty in Famine Relief Sub-Division, Mohindergarh, and started taking over the charge from Shri S.K. Khurana on 22nd September, 1968 (forenoon) and completed the same on 23rd September, 1968 (afternoon) relievihg Shri S.K. Khurana transferred.

Sd . . .,

Chief Engineer.

12373 CS (H)—Govt. Press, Chd.